

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JAMES EDWARD SCOTT, III,

Plaintiff,

v.

STATE OF NEVADA EX REL. NDOC, *et al.*,

Defendants.

Case No. 3:23-cv-00301-MMD-CSD

ORDER

Plaintiff James Scott brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center. (ECF No. 8.) On May 15, 2024, this Court ordered Scott to file an amended complaint by June 17, 2024. (ECF No. 7.) The Court warned Scott that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 8.) That deadline expired and Scott did not file an amended complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
2 of cases on their merits; and (5) the availability of less drastic alternatives. *See In re*  
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
4 *Malone*, 833 F.2d at 130.

5 The first two factors, the public's interest in expeditiously resolving this litigation  
6 and the Court's interest in managing its docket, weigh in favor of dismissal of Scott's  
7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
8 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
9 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542  
10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can  
13 be used to correct the party's failure that brought about the Court's need to consider  
14 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
15 that considering less drastic alternatives *before* the party has disobeyed a court order  
16 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
17 Cir. 2002). Courts "need not exhaust every sanction short of dismissal before finally  
18 dismissing a case, but must explore possible and meaningful alternatives." *Henderson v.*  
19 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically  
20 proceed until and unless Scott files an amended complaint, the only alternative is to enter  
21 a second order setting another deadline. But the reality of repeating an ignored order is  
22 that it often only delays the inevitable and squanders the Court's finite resources. The  
23 circumstances here do not indicate that this case will be an exception. Setting another  
24 deadline is not a meaningful alternative given these circumstances. So the fifth factor  
25 favors dismissal.

26 Having thoroughly considered these dismissal factors, the Court finds that they  
27 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
28 prejudice based on Scott's failure to file an amended complaint in compliance with this

1 Court's May 15, 2024, order and for failure to state a claim. The Clerk of Court is directed  
2 to enter judgment accordingly and close this case. No other documents may be filed in  
3 this now-closed case. If Scott wishes to pursue his claims, he must file a complaint in a  
4 new case.

5 It is further ordered that the application to proceed *in forma pauperis* (ECF No. 4)  
6 is granted. This status doesn't relieve Scott of his obligation to pay the full \$350 filing fee  
7 under the statute; it just means that he can do it in installments. And the full \$350 filing  
8 fee remains due and owing even though this case is being dismissed.

9 It is further ordered that the Nevada Department of Corrections must pay to the  
10 Clerk of the United States District Court, District of Nevada, 20% of the preceding month's  
11 deposits to the account of **James Scott, #1207166** (in months that the account exceeds  
12 \$10) until the full \$350 filing fee has been paid for this action. The Clerk is directed to  
13 send a copy of this order to (1) the Finance Division of the Clerk's Office and (2) the  
14 attention of **Chief of Inmate Services for the Nevada Department of Corrections** at  
15 formapauperis@doc.nv.gov.

16 DATED THIS 2<sup>nd</sup> Day of July 2024.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE